

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
BURLINGTON NORTHERN INC., )  
 )  
Appellant, )  
 )  
vs. )  
 )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
 )  
Respondent. )

PCHB No. 240

FINDINGS OF FACT,  
CONCLUSION AND ORDER

This matter, the appeal of a civil penalty of \$50.00 for an alleged violation of respondent's Regulation I, came before W. A. Gissberg, a member of the Pollution Control Hearings Board, in a conference room at respondent's Seattle headquarters on February 27, 1973.

Appellant appeared through its attorney, Gerald A. Troy; respondent appeared through its attorney, Keith D. McGoffin.

From testimony and arguments heard, exhibits examined and from a review of the transcript, and the posthearing briefs of the parties, the Pollution Control Hearings Board makes these

FINDINGS OF FACT

I.

The appellant at all times hereinafter mentioned was the owner of a refrigerated railroad car which was on November 13, 1972, at a railroad siding in Pierce County, Washington at the plant site of West Coast Fruit and Produce Company, hereinafter called the "shipper".

II.

The shipper had ordered the car from appellant for use in transporting or receiving shipper's commodities and at said time and place its employees were working in or near the railroad car.

III.

On November 13, 1972 a large, black plume of smoke emitted from a stack or vent of the railroad car for at least thirty minutes and of such density and color so as to constitute it darker in shade than that designated as No. 2 on the Ringelmann chart; that the shade of the smoke plume was a constant Ringelmann No. 4.

IV.

Notice of Violation No. 5589 was served on appellant citing Section 9.03 of respondent's Regulation I. Notice of Civil Penalty No. 532 in the sum of \$50.00 subsequently was served on appellant.

V.

Section 9.03 of respondent's Regulation I makes it unlawful for any person to cause or allow the emission of any air contaminant for a period aggregating more than three minutes in any one hour, which is darker in shade than that designated as No. 2 (40 percent density) on the Ringelmann chart, as published by the United States Bureau of Mines.

FINDINGS OF FACT,  
CONCLUSION AND ORDER

VI.

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2 That the smoking condition was due to deficient combustion caused by  
3 the fact that the engine in the car was not operating properly. Appellant  
4 has known since 1968 of the defective design of the spring controlling the  
5 air control valve in the engine and since that date has embarked upon a  
6 program to replace all of such springs in its refrigeration railroad cars.  
7 Appellant owns approximately five thousand of such cars and has four major  
8 repair locations throughout the United States, one of which is at Auburn,  
9 Washington. Its spring replacement program is conducted by appellant as  
10 rapidly as the railroad cars having the old springs can be located and are  
11 brought into one of its repair centers. Appellant does have difficulty in  
12 locating some of its cars because of the industry practice of allowing  
13 other railroads to have control of some of its cars. One thousand cars  
14 have had new springs installed at the Auburn repair center.

VII.

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16 The engine room of the refrigerated car is separated from the rest  
17 of the car. The engine is inside of the door which can be opened from the  
18 outside of the car and can be stopped without entering the car.

VIII.

19  
20 The shipper had no authority over the car except to load or unload  
21 it and except for the practice of appellant to allow the shipper to stop  
22 and start the engine. Appellant has the duty and makes necessary repairs  
23 to the engine within twenty-four hours after notice of a defect.

24 From the foregoing, the Board makes and enters this

CONCLUSION OF LAW

25  
26 Appellant, knowing of the defective design of the equipment, caused

27 FINDINGS OF FACT,  
CONCLUSION AND ORDER

1 or allowed the emission of an air contaminant in violation of Regulation  
2 I, Section 9.03(a) of the Puget Sound Air Pollution Control Agency.

3 From which comes this

4 DECISION

5 The appeal is denied and the respondent's Notice of Civil Penalty  
6 is affirmed.

7 DONE at Lacey, Washington this 17<sup>th</sup> day of July, 1973.

8 POLLUTION CONTROL HEARINGS BOARD

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10 WALT WOODWARD, Chairman

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12 W. A. GISSBERG, Member

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14 JAMES T. SHEEHY, Member

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26 FINDINGS OF FACT,  
27 CONCLUSION AND ORDER